

THE BACKGROUND OF MOUNT LAUREL I

Norman Williams and Anya Yates

The long story on the background of the *Mount Laurel* case provides many lessons on how to bring major land use cases—and even more lessons on how *not* to bring such lawsuits.¹

New Jersey has always been of special importance in planning law for two reasons. To begin with, it is the most crowded state, with the largest number of persons per square mile, so that inevitably more people keep bumping into each other and thus creating land use conflicts. Moreover, the highly respected New Jersey court has long had a stable membership, including four of the ablest judges in the country: Chief Justice Weintraub and Justices Hall, Jacobs and Francis—and they have provided more penetrating analysis than other courts. As a result, an extraordinary number of the leading cases on land use have come from New Jersey.

Historically, the New Jersey courts were one of the last in the country to accept the idea of public control of land use; unlike most other states, they did not do so until after *Euclid*.² Even after formal acceptance of the zoning principle, the New Jersey Supreme Court continued right through the 1930s and 1940s to resist implementation of zoning in specific cases; during this period it was always possible to bring a laugh at a planning conference by a sarcastic reference to zoning case law in New Jersey. However, with the adoption of a new state constitution³ in 1947, the situation was precisely reversed. After this, the New Jersey court went all out to enforce zoning regulations, so much so that it was rather difficult for a town to lose a zoning case brought by a developer. Under the standard formula, so long as the issue was fairly debatable—that is, so long as a municipal lawyer could manage to keep on making a noise like a lawyer—the regulation in question was upheld.⁴ The policy basis for this was quite clear: this represented an explicit adoption by the New Jersey Supreme Court of the proposition that since the free market in land development had made such a mess of northern New Jersey—a proposition

1. One acerbic observer commented at the time that, since courts were obviously ready for a major reversal on the exclusionary issue, if the anti-exclusionary lawyers managed to lose such a case, they had no one to blame but themselves.

2. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). For how this decision came about, written by one of the most extreme right-wing of judges, see Alfred McCormack, *A Law Clerk's Recollections*, 46 COLUM. L. REV. 710, 712 (1946). The opinion leans heavily on other favorable opinions which had already come down at the state level.

3. The text of which provides a specific presumption in favor of land use regulation. See N.J. CONST. art. IV, § 7, ¶ 11.

4. The brilliant demonstration of this was in Justice Frederick Hall's famous dissent in *Vickers v. Gloucester Township*, 181 A.2d 129, 140 (1962), *appeal dismissed*, 371 U.S. 233 (1963).

rather easy to argue—nothing could be lost by turning the towns loose to see what they could do on their own. The New Jersey courts thus upheld a broad variety of land use restrictions during the period of the 1950s and 1960s.⁵ However, before long it became clear that, along with upholding almost everything else, the New Jersey court was prepared to uphold regulations which were specifically exclusionary against the lower-income groups. In a leading case,⁶ the court explicitly upheld a minimum building-size restriction for single-family detached houses; it was said that once a given size (and therefore cost) of a house was established as the prevailing pattern in a neighborhood, it was appropriate for the local government to prevent any smaller (i.e., less expensive) houses in the same area. Since size of house is the prime determinant of housing cost, this was an explicit holding in favor of exclusion on economic grounds.⁷ Moreover, since the machinery involved had a self-perpetuating character,⁸ there was no reason to be surprised that exclusionary zoning spread rather rapidly—though no one really had any idea as to how far. All through the 1950s and 1960s, this remained the law.

5. For typical examples, see *Fanale v. Hasbrouck Heights*, 139 A.2d 749 (N.J. 1958) (upholding a restriction against any further apartments in town); *Fischer v. Bedminster*, 93 A.2d 378 (N.J. 1952) (upholding five-acre zoning in an open exurban area); *Duffcon Concrete Prods. v. Cresskill*, 64 A.2d 347 (N.J. 1949) (upholding the right of a town to exclude industry completely from its area); but see *Ward v. Scott*, 93 A.2d 385 (N.J. 1952).

6. *Lionshead Lake, Inc. v. Wayne*, 73 A.2d 287 (N.J. Super. Ct. Law Div. 1950), *rev'd*, 74 A.2d 609 (N.J. Super. Ct. App. Div. 1950); *Lionshead Lake, Inc. v. Wayne*, 80 A.2d 650 (N.J. Super. Ct. Law Div. 1951), *rev'd*, 89 A.2d 693 (N.J. 1952), *appeal dismissed*, 344 U.S. 919 (1953).

7. The regulations in *Wayne*, which were in fact based upon the standard dimensions of locally-available lumber, were elaborately defended by a state agency on essentially phony public health grounds—essentially, that the people living in overcrowded housing were likely to keep bumping into each other and to end up in the divorce courts. (The argument was clearly phony because it was not related to the number of occupants. As written, the regulations were clearly concerned not with the actual size of a house, but with how big it would look.) The argument on public health was an afterthought, not surfacing until the third opinion. A few academic commentators criticized the exclusionary decision rather sharply; see, e.g., Norman Williams, Jr., *Planning Law and Democratic Living*, 20 L. & CONTEMP. PROBS. 317 (1955); Charles M. Haar, *Zoning for Minimum Standards: The Wayne Township Case*, 66 HARV. L. REV. 1051 (1953); Charles M. Haar, *Wayne Township: Zoning for Whom?—In Brief Reply*, 67 HARV. L. REV. 986 (1954); Ralph Crolley & C. McKim Norton, *Public Health and Minimum House Size*, 72 REGIONAL PLAN. ASS'N ZONING BULL. 1 (1954). For a more detailed field study of the situation in *Wayne*, see Norman Williams, Jr. & Edward Wacks, *Segregation of Residential Areas Along Economic Lines: Lionshead Lake Revisited*, 1969 WIS. L. REV. 827 (1969). Most suburban towns found the set-up quite congenial.

8. If one municipality had less restrictive regulations than the others, the developers would tend to rush into the municipality with the less restrictive regulations. That town would then raise the restrictions, driving the developers into the next-least-restrictive town—and so on.

The first break in the exclusionary tradition came with Justice Hall's famous dissent in *Vickers v. Gloucester Township*.⁹ In his *Vickers* dissent, which is generally regarded as *the* outstanding opinion in land use law, Justice Hall first challenged the fairly-debatable rule in judicial review, by pointing out that under this rule it was practically impossible for a town to lose a zoning case. The *Vickers* dissent thus pointed the way to more careful and perceptive judicial review in zoning cases, which has been the prevailing practice since about 1970. Moreover, this opinion also contained a brilliant analysis of the real world of suburban zoning, based not on case law or abstract reasoning but on first-hand observation of the actual operation of suburban life; there is a lot of new material in the opinion which had never occurred to anybody else.¹⁰ While the *Vickers* dissent remained the only judicial criticism of New Jersey exclusionary zoning through the 1960s, a major change took place in a 1970 case from Englewood.¹¹ The New Jersey court upheld (as against a neighbor's protest) a "d variance" to permit an urban renewal project in Englewood, clearly designed (at least in part) to accommodate African-Americans from the local slums, and located in what was previously regarded as a "white area." In doing so, Justice Hall (now writing for a unanimous court) added a dictum that, if in such a situation the town had refused the "variance," such refusal could not properly be upheld.¹² While this was clearly dictum, it represented a drastic change of position by the New Jersey court; the only logical justification for that comment was that, if a town does use land use controls, these must be administered with an eye to the interests of all groups of the population. For anyone following the New Jersey situation closely, it was pretty clear with this opinion that the jig was up, as far as judicial approval of exclusionary zoning was concerned.¹³ It is difficult now to see why what seemed so obvious to a few people, took so long for everyone else to see; presumably the urban riots of the late 1960s (especially in Newark) finally dramatized the point that—from the overall policy point of view—it was not the smartest thing

9. *Vickers v. Gloucester Township*, 181 A.2d 129, 140 (N.J. 1962), *cert. denied*, 371 U.S. 233 (1963), *overruled by* Southern Burlington County NAACP v. Township of Mount Laurel, 456 A.2d 390 (N.J. 1983) [hereinafter *Mt. Laurel II*]. (The case was also in effect, though not officially, overruled by *Home Builder's League of South Jersey, Inc. v. Berlin*, 405 A.2d 381 (N.J. 1979).)

10. When asked later why, long before anyone else, he could see the real world as it really was, Justice Hall replied that he had no explanation for this; all anyone had to do was to look around.

11. *DeSimone v. Greater Englewood Hous. Corp. No. 1*, 267 A.2d 31 (N.J. 1970).

12. *Id.* at 39.

13. Apparently Hall sensed that opinion was changing among his colleagues (only one had joined in the *Vickers* dissent)—and apparently Hall's draft did not provoke any serious discussion on this point.

in the world for the government to take active steps to box the minority groups into the old tired central cities. As a result, in the early 1970s there was a considerable rush to take advantage of the new attitude—lots of people volunteered to be the hero who would bring the action to slay the dragon of exclusionary zoning. As a result, several rather badly thought out cases were brought for this purpose.

During the early 1970s, the general public mood remained much like that of the late 1960s, and in that mood the question of suburban exclusionary zoning soon became a very hot issue. In particular, a superb public relations campaign was carried out by a new civic organization called Suburban Action, rather heavily financed by several foundations and under the direction of a brilliant planner-lawyer, Paul Davidoff. As a result of this campaign the actual results of exclusionary zoning began (for the first time) to be rather widely understood, particularly in the Northeast; the question was not merely access to better housing, but also access to better jobs and better schools. Moreover, a couple of important cases in the other state and lower federal courts began to spell out the real issues.¹⁴ On the other hand, a couple of United States Supreme Court cases seemed to point in the opposite direction, so far as that Court was concerned.¹⁵ Obviously, the pot was boiling hard. Unfortunately, the first leading cases brought explicitly for this purpose in New Jersey and New York were not well thought out. Even the test case brought by Suburban Action against a rapidly growing township in Middlesex County left a lot to be desired.¹⁶ In another case, clearly brought in an attempt to be the leading case against exclusionary zoning—but also with severe limitations—the Supreme Court upheld a restriction in a Long Island village (located near a SUNY campus) prohibiting more than two students living together as a quasi-family in a single-family district. If this case had been won by the anti-exclusionary forces, it would not have accomplished very much—the

14. Southern Alameda Spanish Speaking Org. v. Union City, 424 F.2d 291 (9th Cir. 1970), *on remand*, No. 51590 (N.D. Cal., July 31, 1970); Kennedy Park Homes Ass'n, Inc. v. Lackawanna, 318 F. Supp. 669 (W.D.N.Y. 1970), *aff'd*, 436 F.2d 108 (2d Cir. 1970), *cert. denied*, 401 U.S. 1010 (1971).

15. James v. Valtierra, 402 U.S. 137 (1971); Belle Terre v. Boraas, 416 U.S. 1 (1974).

16. Madison Township (now known as Old Brook) was a rapidly growing township, where a respectable case could be made on growth management grounds for some slowdown in the rapid pace of development; it was also the only township in Middlesex County (the state's primary industrial growth area) which had a substantial area of vacant land zoned to permit multiple dwellings. Moreover, there was a severe environmental problem (involving pollution of present and future public water supplies) which would occur with any medium-to-high-density development, as proposed on the particular site chosen for the case. This site was clearly chosen in order to avoid any difficulties about standing to sue, by having as co-plaintiff a developer who agreed to provide a limited percentage of low-cost housing as part of his larger project. See *infra* note 24.

situation was quite different from the classical exclusionary one—but if it was lost, it could do great harm, for the structure of the case simply yelled for a holding strongly affirming conventional single-family zoning—and this was in fact what happened.¹⁷

Meanwhile, while the pot was boiling so vigorously, a serious attempt was being made to analyze the actual situation on the spread of exclusionary zoning. Specifically, a group situated (not surprisingly) at Rutgers¹⁸ made repeated attempts to get a foundation grant of some kind to investigate the exact extent of exclusionary zoning, somewhere; nobody really knew how far this had gone, although it was pretty obvious from looking around that it had gone quite a ways. Finally, following up on a suggestion by Ernest Erber (a New York Regional Plan representative in New Jersey with a special interest in affordable housing), a group led by Erber and Professor Williams went to Trenton to discuss the problem with Commissioner Paul Ylvisaker, a nationally-known urban expert who had been Commissioner of Community Affairs during the Hughes administration for several years. The prospects did not seem particularly promising, since Ylvisaker had been Commissioner for so many years without doing anything about this—and he was scheduled to go out of office,¹⁹ along with Governor Hughes and the Democratic administration, only two weeks later. Nonetheless, more or less in final desperation, the attempt was made. After a presentation of the problem, Ylvisaker turned to Sidney Willis, his State Planning Director, and inquired whether some such study was not envisaged in their long-range program. Willis replied that yes, it definitely was there and it was important, but they had never been able to find the time to get anywhere near it. “Hmmmmm,” said Ylvisaker, after mulling it over a bit, “let’s start it tomorrow morning.” Against this implausible background, a substantial staff in the Department of Community Affairs spent the next year in a really detailed study of the extent of exclusionary zoning in New Jersey.²⁰ This study was designed to spell out the extent of exclusionary zoning, as defined from the liberal viewpoint—i.e., zoning whose purpose and/or effect was to exclude the lower-income groups. For the purpose of the study, land suitable for

17. *Belle Terre*, 416 U.S. 1.

18. The group consisted of Professor Lawrence Mann, Chairman of the Planning Department at Rutgers; Professor George Sternlieb, one of the nation’s outstanding housing economists; and Professor Norman Williams, who was working at the time on a general treatise on land use controls.

19. The Hughes administration had been in office for eight years.

20. It was never clear to what extent the new Republican controlled Department of Community Affairs really understood what a hot potato this situation involved. The staff engaged in the study were quite aware of this, and worried about it. However, as indicated below, as things turned out, all went well from the anti-exclusionary viewpoint.

affordable housing was defined as land which was vacant, flat, dry, and zoned for residence; that is, the study excluded from consideration all built-up land, all land zoned for commerce and industry, and all land which was either steep or wet. Fortunately, most of the various county planning boards were on top of their problems, so that the massive amount of relevant information was fairly readily available—that is, with a massive investment of time, which was made, following Ylvisaker's instructions. As a result, for each county, the study defined the area suitable for mass housing, without impairing environmental needs. The results of this study astonished everybody; no one had dreamed how far the exclusionary pattern had gone. Taking into consideration the four Western counties of the New York metropolitan area, which were the four rapidly developing counties in New Jersey—Morris, Somerset, Middlesex, and Monmouth—the survey indicated that in those four counties some 405,000 acres were potentially available for mass housing, as defined above. Primary attention was given to land available for multiple dwellings and mobile homes, since a long series of studies all over the world indicated that these provide the best opportunities for standard-quality inexpensive housing. Of the 405,000 acres, 99.5% was zoned against multiple dwellings—and, actually, practically 100% was zoned against mobile homes.²¹ Moreover, of the single-family areas, large areas were zoned for minimum building sizes much larger than appropriate for mass housing, and large areas were subject to acreage zoning as well, except in Middlesex County, which had a considerable area zoned for small-lot single-family dwellings.

As it happened, at the time these reports were approaching completion, Governor Cahill had managed to get into a vigorous argument with local builders and municipal attorneys on the question of the extent of exclusionary zoning in New Jersey. The builders insisted there was a great deal—but naturally they defined exclusionary zoning very differently, not as zoning regulations specifically directed at excluding the poor, but as any zoning regulation likely to interfere with what they wanted to do. When Cahill made a public statement repeating what he had heard about the prevalence of exclusionary zoning, the municipal attorneys descended upon him in force, arguing that he was falling for typical builders' propaganda. The Governor was definitely not enjoying himself in this situation. Right in the midst of all this, Planning Director Willis turned up with results of the survey, which proved that there was a very severe

21. There was one single exception to this—one township down by the Shore in Monmouth County would permit mobile homes on two acres of land! (This was simply the result of careless draftsmanship.)

problem. Since the results were so dramatic, Governor Cahill decided to go public with them. The result was a major report on the exclusionary housing problem in New Jersey,²² issued over the Governor's signature, and spelling out the situation in detail, county by county. With this development, the situation on exclusionary zoning had changed completely. Instead of just a few academic critics complaining in the wilderness, the Governor of the most important state was now solidly on the anti-exclusionary side, and in a mood for a good fight about it. And, for anyone arguing an anti-exclusionary case, extraordinary materials were available and generally published.²³

Meanwhile, litigation was gradually moving through the courts. Two cases were in the works in New Jersey, but the one involving Madison Township in Middlesex County got all the attention, because of the dramatic (and well-financed) publicity campaign carried on there by Suburban Action.²⁴ When the *Madison* case came up for its first oral argument before the New Jersey Supreme Court in March 1973, the court combined the public hearing with one on another case, brought from a distant township down in central New Jersey known as Mount Laurel, where there was some residual slum housing because of long-term, part-time (migratory) agricultural use—and where the local authorities had been busy promoting expensive housing. However, nobody paid any attention to the *Mount Laurel* case, since everyone believed that *Madison* was to be the critical one. In the first oral argument on *Madison*, the intensive questioning by the members of the court reflected a lot of deep and serious thought on the issues likely to come up; for anyone listening to that hearing, it was clear that members of the court were far ahead of everybody else in their understanding both of the seriousness of the problem involved and the complexity of the many related issues.

22. A BLUEPRINT FOR HOUSING IN NEW JERSEY, SPECIAL MESSAGE BY GOVERNOR WILLIAM T. CAHILL (Dec. 7, 1970). The picture spelled out above is rather more sharply defined than that in the Governor's two reports, where the summary was diluted by the inclusion of the rather different situation in counties from South Jersey (the Governor's home area). See also the subsequent state report (incorporating the results of the survey described above)—in DEPARTMENT COMMUNITY AFF. DIVISION OF STATE & REGIONAL PLANNING, *Land Use Regulation, The Residential Land Supply* (Apr. 1972).

23. In the midst of all this, Sidney Willis turned up in Professor Williams' office with a large file with the request, "Please write all this up before somebody tells me not to give it to you." The result was published in Norman Williams, Jr. & Thomas Norman, *Exclusionary Land Use Controls: The Case of North-Eastern New Jersey*, 22 SYRACUSE L. REV. 475 (1971) and Norman Williams, Jr. & Thomas Norman, *Exclusionary Land Use Controls: The Case of North-Eastern New Jersey*, 4 LAND USE CONTROLS ANN. 1 (1970).

24. The two cases are *Oakwood at Madison, Inc. v. Township of Madison*, 283 A.2d 353 (N.J. Super. Ct. Law Div. 1971) and *Oakwood at Madison, Inc. v. Township of Madison*, 320 A.2d 223 (N.J. Super. Ct. Law Div. 1974), *aff'd*, 371 A.2d 1192 (N.J. 1977).

Moreover, the tone at this first public hearing was unmistakable—those who, after the *Englewood* case, expected a great reversal, were clearly vindicated. As a result, Madison Township then proceeded to adopt a very considerable change in their local zoning—eliminating most of the area zoned for acreage, rezoning this land for higher density, and also again rezoning substantial areas for multiple dwellings as of right. A few months after this hearing, the whole problem was set for reargument before the court the following year; apparently the court decided that, since the treatment in the opinion was obviously going to set in motion complex issues, the newly appointed members of the court should be the ones to take the responsibility of spelling out the exact basis of the decision.²⁵

As a result, a second oral argument took place in January 1974. Just twenty-four hours before this reargument, counsel for Madison submitted to the court and parties a planners' brief, running over a hundred pages and arguing that, if towns in New Jersey had any duty to make some provision for affordable housing, the revised Madison ordinance now took care of such a duty. There was of course no real opportunity for serious consideration of such a brief in the twenty-four hours before oral argument, and the court reacted with considerable asperity; Justice Hall commented orally that, after a nine month delay from the previous hearing, providing such a brief twenty-four hours before oral argument was "a gross imposition" on the court. However, that was nothing compared to what happened next. When plaintiffs began to present their case, the counsel for their developer-ally²⁶ rose to speak; he was promptly met with the obvious question: "Counsel, we don't understand what kind of opinion you are asking us to give in this situation. Do you expect us to give an opinion on the previous ordinance, which has been repealed, or on the new ordinance which has never been tried below?" Either answer A or answer B would have been embarrassing enough; the only worse

25. Of the four giants on the New Jersey Court during the 1950s and 1960s, Justice Francis had retired before the first oral argument; Chief Justice Weintraub retired after the first oral argument and before the second one; and Justices Hall and Jacobs were preparing to retire in the near future.

26. As indicated above, Suburban Action chose their New Jersey case by allying themselves with a potential developer of a specific site, apparently in order to avoid any problems on plaintiffs' standing to sue. (In this connection, see *Warth v. Seldin*, 422 U.S. 490 (1975)). There was no such problem in New Jersey. For *amici*, research on this point was remarkably easy; Professor Gerald Moran, the procedural expert at the Rutgers-Newark Law School, was consulted, and in about 30 seconds he gave the answer—"There is no problem—in this kind of situation, this court will give standing to anybody." It turned out that he was correct. At the first oral argument, counsel for Madison tried to argue the question of plaintiffs' standing to sue. Chief Justice Weintraub growled the answer—"Counsel, don't waste our time or yours on questions of standing. If there is a problem of standing in this case, we grant standing to plaintiffs herewith. Proceed."

position was the one which was actually given—counsel did not know what opinion he wanted—apparently he was expecting the court to issue a general condemnation against sin. After a considerable time wasted in debate of this kind, the justices held a hurried conference and announced their disposition of the *Madison* case—counsel were told to go out and in a couple of hours to work out an agreed-upon schedule for reargument below and then re-appeal to the New Jersey Supreme Court. That was the end of *Madison* as a serious major case.²⁷

A strange feeling then swept across the courtroom, as everybody realized that the great reversal (which by now was expected by everybody) could now not take place in the *Madison* case; and so the long-ignored case from Mount Laurel, somewhere down in South Jersey, had become the critical vehicle. The situation was almost comic in detail; most of the lawyers in the courtroom had come prepared only on *Madison*, and some of the *amici*, as non-members of the state bar, were specifically admitted to speak only on *Madison*.²⁸ (A lot of people had not even bothered to find out where Mount Laurel was; there was a good deal of surreptitious looking at maps, to try and figure out what we were talking about.) When one counsel for *amici* rose to speak, Chief Justice Hughes told him that it was about time for lunch (which it was), “and therefore you have exactly ten minutes to explain this whole problem to us.” Remember that the final opinion in *Mount Laurel II* ran to 120 pages.

Actually the *Mount Laurel* case was a far better case for an anti-exclusionary vehicle than the *Madison* case would have been; and so, when everybody readjusted their sights a bit and began to talk about *Mount Laurel*, that became the vehicle for the great reversal. However, several points must be noted. The lawyers who actually brought the winning case have gotten remarkably little credit or public regard for doing so. The *Mount Laurel* case was prepared by a group of young lawyers representing the poverty-program legal office in South Jersey. If they had not had a case all prepared and ready for appeal and argument at this time, the opportunity would have been lost to have a major anti-exclusionary opinion written by Judge Hall, whose retirement was clearly not far distant. Moreover, these lawyers, true to their own tradition, had phrased their case largely in racial terms, as a series of zoning regulations designed

27. See *supra* note 26.

28. *Oakwood at Madison, Inc. v. Township of Madison*, 283 A.2d 353 (N.J. Super. Ct. Law Div. 1971); *Oakwood at Madison, Inc. v. Township of Madison*, 320 A.2d 223 (N.J. Super. Ct. Law Div. 1974), *aff'd*, 371 A.2d 1192 (N.J. 1977). The revised Madison ordinance was held still inadequate and eventually found its way back through the courts, and at that time this represented a step backwards from *Southern Burlington County NAACP v. Township of Mount Laurel*, 336 A.2d 713 (N.J. 1975) [hereinafter *Mount Laurel I*].

to exclude blacks from new standard housing. It was a matter of definite choice by the New Jersey Supreme Court to transmute the *Mount Laurel* case into a challenge to the exclusion of housing for a wide variety of groups. Moreover, the court took a year before announcing the opinion in *Mount Laurel I*, and Justice Hall retired shortly after the decision was announced; clearly this was his farewell to the New Jersey Supreme Court. Finally, Hall was unmistakably clear in expanding the protection to cover discrimination on economic grounds, as follows:

Plaintiff represents the minority group poor (black and Hispanic) seeking such quarters. But they are not the only category of persons barred from so many municipalities by reason of restrictive land use regulations. We have reference to young and elderly couples, single persons and large, growing families not in the poverty class, but who still cannot afford the . . . relatively high-priced, single-family detached dwellings on sizeable lots and, in some municipalities, expensive apartments. We will, therefore, consider the case from the wider viewpoint that the effect of Mount Laurel's land use regulation has been to prevent various categories of persons from living in the township because of the limited extent of their income and resources.²⁹

POST-MOUNT LAUREL

As John Payne points out, *Mount Laurel I* was the beginning, not the end, of the anti-exclusionary story in New Jersey. The subsequent creation of the Council on Affordable Housing, shaped by a Republican governor's conditional veto, helped to shift the anti-exclusionary zoning movement away from desegregation of the suburbs and more toward the shuffling of rehabilitation money between the central cities and the suburbs. And New Jersey's current reliance on so-called inclusionary zoning techniques—that is, making twenty percent of a project low and moderate housing, as part of a project generally at a higher density—means that on any given project a relatively small group of home purchasers are forced to subsidize cheaper housing nearby for another group of purchasers. This narrow focus of the subsidy burden may eventually bring resistance, as it has in some European cities that tried the same system. But despite a variety of obstacles and detours after the 1975 decision, it seems clear that Justice Hall and his colleagues on the New

29. *Mt. Laurel I*, 336 A.2d at 717 (footnote omitted).

Jersey Supreme Court charted a new course for the law of exclusionary zoning in creating the doctrine to which the previously unknown township of Mount Laurel unwittingly gave its name.

